"The general scope of the series as a whole will be as broad and extensive as the history of English law itself. The point of view which has been adopted in planning the series is that English law has a place in world history and not merely in insular history. The whole course of development of historical science during the last hundred years has prepared the way for the taking of this world view-point in respect to the origin, growth, and diffusion of English law" (p. vi).

In this first volume by Dr. Winfield, a detailed history of the various remedies, civil and criminal, for abuse of process in English law is presented for the first time in connected form. This, together with the author's forthcoming treatise on the modern law, *The Present Law of Abuse of Procedure,* will cover a subject the importance of which has been only partially suggested by the earlier monographs of Justice Wright and J. W. Bryan. In the study before us the author is largely concerned with the mediaeval law of conspiracy and its development in the seventeenth and eighteenth centuries. Among the more important topics considered are the Statutes of Conspirators, the writ of conspiracy and its ultimate supersession by the action on the case in the nature of conspiracy, the early history of conspiracy as a crime and the subsequent expansion of the conception. The remaining chapters deal with the history of maintenance and champerty, of embracery and misconduct of jurors, of common barratry and frivolous arrests. It is significant that all these were almost exclusively used in the middle ages as remedies for abuse of legal process: their variety is an illustration at large of a litigious time in which the law court was used or abused as the most popular alternative for private warfare. Indeed, as the author states, a difficult problem of judicial administration was involved:

"The story of what justifies conspiracy in its old sense is the story of a long struggle to solve the legal puzzle of punishing the rogue who would kill and rob with the law's own weapons without at the same time terrifying the honest accuser or plaintiff" (p. 67).

In general, the materials afforded by the Year Books, the successive registers of writs, and the statutes have been treated with critical thoroughness. Incidentally, it has been indicated that the early English statutes stand in some need of scholarly treatment: it has also been fairly demonstrated that the writ of conspiracy emanated from the statutes of Edward I and we are led to infer that Coke, in regarding the writ as of common law origin, here as on other occasions placed undue reliance on the Mirrour of Justices. We should like to have seen some questions discussed which have been omitted; in particular, the treatment of conspiracy by the Star Chamber, a matter of some importance to the post-Restoration expansion of criminal conspiracy. But perhaps the author's primary interest in abuse of legal process precluded this. In any case, we could have no more generous wish for the Cambridge series than that it should maintain the standard set by its first volume.

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THE PROCEDURE AND LAW OF SURROGATES' COURTS. Fourth Edition. By WILLIS E. HEATON. Albany: MATTHEW BENDER AND CO. 1922. Vol. I., pp. xliv, 1108; Vol. II, pp. xxxviii, 1099.

The former surrogate of Rensselaer County, Willis E. Heaton, has brought out the fourth edition of his treatise on the procedure and law of the Surrogate's Court, published by Matthew Bender & Co. The work is in two volumes, and as a matter of bookmaking alone is a great improvement upon the former editions. The paper is good. The type is excellent. The front index under "chapters and their contents" is a valuable aid. The references to statutes, and the table of sections of the Code, with the corresponding sections of the new

Surrogate's Court Act, and with reference to the book paragraphs in which they are discussed, are of great value. This table illustrates the difficulty into which bookmakers as well as book users are thrust by the unthinking methods of the legislature when they revise existing laws.

In the main the discussion follows a logical sequence. The book is full of valuable sub-headings, but one has continually to turn to the index in order to ascertain the *locus in quo* any particular subject or sub-topic is covered, because of the absence of continuous topical page headings in the various subdivisions of each discussion, and because the particular sub-topic is not always completely covered in what would seem to be its appropriate chapter. The forms are authoritative, but we still have to complain of the inadequacy of the index. An analytical index is a very valuable aid in the use of a textbook, particularly on practice. To illustrate: the subject of Ancillary Letters is indexed under nine headings: Accounting; Authenticated Papers from Foreign Jurisdiction Must be Filed; Authority, under Copy to be sent State Office; Determination as to Creditors and Transfer Tax; General Nature of; Not Necessary to Bring Action; Security Required; Transmission of Papers to Secretary of State or Comptroller on Issue.

These headings are sufficient to guide no one but an expert to the place in the book in which these matters are treated. They seem hardly sufficient to guide a student or a young practitioner any more than a general reference to that section or chapter of the book in which the subject is discussed would be adequate.

The index is not sufficient nor complete. Simply as a matter of curiosity, for example, we desire to find a reference to a purchase money mortgage taken by a trustee on the sale of real estate for an amount in excess of fifty per cent of the value of the property sold. Is this an investment of the trust fund, and, if so, is it forbidden by the statute, or is the security adequate and has the trustee exercised a proper discretion in agreeing upon the terms of sale? We looked for this because so much substantive law and helpful comment on a trustee's duty and power are in the text. We fail to find any reference to this matter under "Mortgage" or "Sale of Real Property," under "Investment" or "Purchase Money." The writer has knowledge of the difficulties of preparing an index. It is in some ways as difficult a task as that of preparing the book itself; but a complete index makes every page of the book available to the purchaser.

The division of the work into two volumes is regrettable, but unavoidable when paper of that weight is used, and the division of the subjects covered in the two volumes is arbitrary in one sense, but not at all unreasonable.

In view of the author's relation to the Surrogate's Court, of which he was an able member and to the Surrogates' Association which took part in the preparation of the Surrogate's Court Act, the profession would have welcomed a more careful and elaborate discussion of the jurisdiction of the court. This subject is covered by two chapters, IV and V. The index to "Contents" of these chapters does not begin to indicate the character of the discussion, but the final index, in respect to it, is far more elaborate, although still not analytical, but alphabetical. The reference to equitable jurisdiction is to page 1847, which is in the chapter on "Final Judicial Settlement," and in the section under "Representative May Procure Determination of his Claim Against the Deceased." It does not relate to the discussion as to the effect of the amendment in 1921 of Section 40 of the Surrogate's Court Act, which is very sketchily discussed (pp. 52, 53), and is contradictory to the description of equitable powers (p. 52), citing the *Holzworth* case[1] which, very mistakenly, as we believe, construes

[1] (1915) 166 App. Div. 150. 151 N. Y. Supp. 1072.

Section 2510 of the Code of Civil Procedure, now Section 40 of the Surrogate's Court Act, by limiting the broad powers granted in the first part of that section to the specific cases described in the eight subdivisions that followed, which the revisers intended as an *addition to* and *not* as a limitation on, the general powers granted by the revision of 1914. This attitude of the appellate courts shown in the *Holzworth* and other cases compelled the legislature to restate its intention by the interpretative amendment to Section 40 in 1921.

There is no table of cases, and thus the admirable collection of authorities, showing great labor, industry and research on the part of the author, is not made as readily available, considering the sketchiness of the index and table of contents and page headings, as it otherwise would be. To illustrate again: for example, if one desired to see what the author had to say about the effect of the *Holzworth* case, not having a table of cases, he would look under "Equitable Jurisdiction," and find no reference to page 52—simply the reference to page 1847—and instead of having the whole subject of jurisdiction comprehensively discussed in one chapter or section of his book, the page references in two pages of the index under this heading range from the early pages of the book to almost the last page thereof. Moreover, *jurisdiction* and *powers* are not clearly distinguished. The only reference to "Power" under the index heading "Jurisdiction" is "'Power to Direct and Control. Unsafe Investments.' Page 1644." Under general indexing of "Power," there is no such reference, but there is a reference to "Power to Direct Performance of Duty," referring to page 21. This illustrates the fact that the great value of this book in its available material and exceedingly helpful use of authorities is not put at the quick service of the practitioner. This is greatly to be regretted, because the writer speaks with authority. Ordinarily a book on practice may wisely be restricted to quotation and citation of judicial decisions, but where the writer is one who himself has made judicial decisions and has taken part in statutory revision, the practitioner would value his suggestions, not only as to the meaning of such statutory amendments, but as to the restricted meaning that ought to be given to certain prior decisions construing the statutes, as well as his observations from time to time as to a proper development of the law. Nevertheless, the book remains a far step forward in the development of Mr. Heaton's treatment of the subject, and will well repay the study and use of the Bar.

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INSANITY AND MENTAL DEFICIENCY IN RELATION TO LEGAL RESPONSIBILITY. A STUDY IN PSYCHOLOGICAL JURISPRUDENCE. By WILLIAM G. H. COOK. London: GEORGE ROUTLEDGE & SONS, LTD. 1921. pp. xxiv, 192.

The title indicates a broader scope than is actually embraced in the work. The author has confined himself to civil cases, omitting criminal responsibility. The criminal side has been discussed by many writers and attracts popular attention. It is therefore an excellent idea to have a book treating the neglected side of civil responsibility, principally torts, contracts and testamentary capacity. In torts, there is very little authority. The American cases seem to have taken the view that lunatics are liable for the damage caused by such acts as would in sane adults amount to tort of either wilful wrong or culpable negligence.[1] This is probably a survival of an older theory that trespass is a wrong of absolute liability. The view of the author is that a lunatic is incapable of committing a tort. It should be noted, however, that the author is speaking of a high degree

[1] Shearman and Redfield, *Negligence* (5th ed. 1898) § 121.